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U.S. Citizenship and Immigration Services

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FILE: [redacted] Office: TEXAS SERVICE CENTER Date: AUG 12 2005
SRC 04 016 52966

IN RE: Petitioner:
Beneficiary: [redacted]

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the employment-based immigrant visa petition. The matter is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner seeks to classify the beneficiary pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as a member of the professions holding an advanced degree. The petitioner is a public university that seeks to employ the beneficiary as a programmer analyst. The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the beneficiary qualifies for classification as a member of the professions holding an advanced degree, but that the petitioner has not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

Section 203(b) of the Act states in pertinent part that:

> (2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. --
>
> > (A) In General. -- Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
> >
> > (B) Waiver of Job Offer.
> >
> > > (i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The director did not dispute that the petitioner qualifies as a member of the professions holding an advanced degree. The sole issue in contention is whether the petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest.

Neither the statute nor the pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Supplementary information to regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (November 29, 1991), states:

> The Service [now Citizenship and Immigration Services (CIS)] believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

Matter of New York State Dept. of Transportation, 22 I&N Dec. 215 (Comm. 1998), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, it must be shown that the alien seeks employment in an area of substantial intrinsic merit. Next, it must be shown that the proposed benefit will be national in scope. Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications.

It must be noted that, while the national interest waiver hinges on prospective national benefit, it clearly must be established that the alien's past record justifies projections of future benefit to the national interest. The petitioner's subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The inclusion of the term "prospective" is used here to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative.

Dr. Larry T. Hoover, director of the petitioner's Police Research Center, describes the beneficiary's work:

> [The beneficiary] is assigned to the Police Research Center's ***CRIMES*** (**C**riminal **R**esearch, **I**nformation **M**anagement and **E**valuation **S**ystem) project. ***CRIMES*** is a state-of-the-art comprehensive computerized police information management system. . . . A number of Texas police jurisdictions are leasing the ***CRIMES*** system, with numerous agencies planning to implement the program. Developmental work on the endeavor began in 1995.
>
> There are emergent technologies that have profound strategy implications for law enforcement. . . .However, the enormous potential for employing emergent technology for expansion of strategy options in policing will either be delayed by years or never fully realized without structured efforts to demonstrate the potential. . . . ***CRIMES*** is an integral part of efforts by the U.S. Department of Justice to improve policing effectiveness and reduce crime by the integration of emergent technology to law enforcement strategy initiatives. . . .
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> [The petitioning institution] is able to generate cutting edge information systems development and provide quality service because we seek only the highest caliber information technology professionals from across the globe. It would be impossible to continue the contribution to the development of state-of-the-art law enforcement information systems with any less than the best Information Technology professionals available worldwide. As such, [the petitioner] wishes to permanently employ [the beneficiary] as a Computer Analyst. [The beneficiary] is an integral part of the ***CRIMES*** endeavor. We are unable to find qualified persons for the positions currently posted – an issue obviously relevant to [the beneficiary's] position. [The beneficiary's] performance has been outstanding. His technical ability is excellent. He has the ability to learn complex programs without special training. His continued employment is regarded as critical for realization of the project goal: demonstration of the application of emergent technology to police agency effectiveness, and the incorporation of that technology to the national homeland defense cooperative effort between the Federal Bureau of Investigation and local law enforcement. . . .
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> This position is a demanding one requiring . . . **knowledge of police systems and practices.** . . . [The beneficiary] has developed that expertise over the years that he has been assigned to the project. We have tried employing persons in related roles and assigning them

> responsibility for important program components. It has not worked. . . . What we cannot find are excellent analysts, such as [the beneficiary], who also know law enforcement systems. We have looked. They are not available. Replacing [the beneficiary] with an American worker would set the project back at least two to three years.

(Emphasis in original.)

The chiefs of four Texas police departments offer letters in support of the petition. These officials indicate that they have been highly satisfied with the CRIMES system in general, and with the beneficiary's work in particular. Chief Leonard Carmack of the Euless Police Department offers the most emphatic endorsement, stating: "The loss of [the beneficiary] would be a devastating blow to the development and completion of the CRIMES project." Individuals from other universities attest to the overall importance of the CRIMES program, but they offer no information about the beneficiary specifically except to state that they have been assured by the petitioner that the beneficiary is irreplaceable.

Background materials submitted with the petition indicate that CRIMES is a statewide, rather than national program. For instance, a brochure from the Police Research Center describes CRIMES as "a direct technical assistance endeavor to Texas law enforcement." Dr. Hoover himself, in a 1995 article in *Police Computer Review*, stated "CRIMES is a statewide computer system," intended for "Texas police departments." A document entitled "Rationale for the CRIMES Endeavor" refers to CRIMES as "the core of [the petitioner's] efforts to bring state-of-the-art technology to Texas law enforcement."

The director requested further evidence to show that the petition meets the guidelines listed in *Matter of New York State Dept. of Transportation*, including the requirement that the benefit be national in scope. In response, the petitioner submits an unsigned letter describing the CRIMES project and the petitioner's role therein. Large portions of this document are copied verbatim fro[redacted] earlier letter submitted with the initial filing.

The most substantial newly written portions of the letter indicates that the petitioner attempted to obtain a labor certification "years ago," but the application was not accepted because the stated minimum requirements were judged to be too narrow. It appears, from the description recounted by the petitioner, that the application for labor certification was still pending at the time of the letter.

As noted above, the CRIMES project is a localized state endeavor. The record contains nothing from the United States Department of Justice or other national entities to show that CRIMES, specifically (rather than law enforcement-related computer systems in general), is national in scope.

The director denied the petition, stating that being qualified to work on the CRIMES project is not sufficient to qualify the beneficiary for a waiver. The director also found that the petitioner has not shown that "the beneficiary has had a significant influence on the field of computer science."

On appeal, the petitioner states that CIS has twice returned the petitioner's Form ETA 750 labor certification application for changes. The labor certification process is overseen by the Department of Labor, not CIS. The record does not contain any documentation to show that the petitioner's difficulty in obtaining labor certification has been due to CIS interference in the application. However sincere the petitioner's frustration with the process may be, there is no evidence that CIS is responsible for the petitioner's difficulty in obtaining a labor certification.

The petitioner describes the situation as a "classic Catch 22" because the director found that labor certification would be appropriate, but the petitioner has been unable to obtain a labor certification on the beneficiary's behalf. Because the adjudication of an application for individual labor certification lies under the jurisdiction of another agency, we cannot comment on that part of the situation. We can, however, note that the national interest waiver does not appear to have been intended simply as a shortcut in situations where the intending employer has had difficulty in obtaining a labor certification. The labor certification process would soon become meaningless if an employer's inability to obtain an approved labor certification was a decisive factor in granting a national interest waiver. The petitioner appears to recognize this, stating "we did not apply for a national interest [waiver] simply because regular certification was denied."

The record unambiguously shows that many of the beneficiary's most valued job skills are ones that he learned while performing his current function for the petitioner. In this sense, the petitioner's inability to specify these same skills on a labor certification is unsurprising, because the beneficiary himself did not possess these skills at the time he was hired. The petitioner's desire to avoid delays caused by teaching a U.S. worker the same skills that it recently taught the beneficiary is understandable, but it is not a valid basis for a national interest waiver. The labor certification process exists to protect U.S. workers who, like the beneficiary, are able to learn additional job-specific skills on the job just as the beneficiary did.

The petitioner acknowledges that the beneficiary has no national reputation, but argues "this standard is not appropriate here." The petitioner observes that *Matter of New York State Dept. of Transportation* contains no requirement for a national reputation. That precedent decision does, however, require that the alien's work be national in scope. In this instance, the petitioner has shown that the beneficiary's work has a direct impact only on a handful of jurisdictions in Texas.

The petitioner argues that "the ***CRIMES*** program is in the national interest" and the petitioner has submitted "letters from Eastern Kentucky University and Wichita State University, [indicating] that [the beneficiary] is a critical component of the project." Those letters are not independent evidence of the beneficiary's role. [redacted]r of Eastern Kentucky University states "I understand from [redacted]Hoover . . . that [the beneficiary] plays a key role in system design, programming, testing, and information." [redacted] Bannister of Wichita State University states "I am told [the beneficiary] is a critical part of the **CRIMES** effort." Thus, these letters serve only to verify that the petitioner has told others that the petitioner believes the petitioner to be irreplaceable and critical to the success of the program. The sincerity of this belief is not in question here, nor is the depth of the petitioner's frustration at what the petitioner seems to perceive as an irrational and arbitrary process.

The petitioner states that the beneficiary "is a critical member of the development team for [the Border Law Enforcement Terrorism Intelligence Project] – placing him directly in service of the national interest through his contributions to the War on Terrorism." The record does not contain any documentation about this project or the nature of the beneficiary's involvement therewith. The fact that the CRIMES project received funding from this project does not make the beneficiary a nationally important figure in counterterrorism.

The petitioner argues that the southern border of the United States "is so porous that tens of thousands cross it illegally every year," and that "[a] federally funded effort to allow Texas police agencies on the Mexican border to share intelligence data will be severely affected" by the beneficiary's departure from the United States. At the time of filing, most of the Texas police jurisdictions that employed CRIMES were not located on the border, and the petitioner has submitted no information to show that CRIMES has, in its first decade of existence, had a detectable influence on illegal border crossings or apprehensions of undocumented aliens, or that it has resulted in the apprehension of any suspected terrorist who would otherwise have eluded detection.

The petitioner is hardly unique in receiving federal grant money; the National Institute of Justice issues hundreds of grants annually, and that entity is only one of many grant-issuing federal offices. The record contains no documentation of the grants or materials from the entities that issued the grants. Working on a project with federal grant funding is not *prima facie* evidence of eligibility for the national interest waiver. However important the petitioner may believe the beneficiary to be to the CRIMES project, the evidence in the record does not indicate that CRIMES stands out among other local/regional law enforcement initiatives, or that the beneficiary's work has made CRIMES more of a model for other programs than it would otherwise have been.

We are not oblivious or indifferent to the petitioner's freely expressed frustration, but at the same time we must follow existing precedent and case law. The controlling interpretation does not indicate that the national interest waiver exists for the purpose of facilitating the immigration of aliens involved in local projects, for whom it has proven difficult to file a satisfactory application for labor certification. With regard to the petitioner's ability to locate workers with comparable expertise with regard to police systems, the available evidence appears to indicate that the beneficiary's existing knowledge of police systems derives from his past studies and employment at the petitioning university itself.

As is clear from a plain reading of the statute, it was not the intent of Congress that every person qualified to engage in a profession in the United States should be exempt from the requirement of a job offer based on national interest. Likewise, it does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given profession, rather than on the merits of the individual alien. On the basis of the evidence submitted, the petitioner has not established that a waiver of the requirement of an approved labor certification will be in the national interest of the United States.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

This denial is without prejudice to the filing of a new petition by a United States employer accompanied by a labor certification issued by the Department of Labor, appropriate supporting evidence and fee.

ORDER: The appeal is dismissed.